



19 November 2020

Open letter to the Minister for Child Protection, the Hon. Simone McGurk

Dear Minister McGurk,

RE: Amendments to the Children and Community Services Act 2004

We write with concern that your Government intends not to progress critical amendments to the *Children and Community Services Amendment Bill 2019*, including a number of recommendations of the recent Legislative Council Inquiry into the Bill. We refer to the *Legislative Council Supplementary Notice Paper No. 157, Issue No. 7*, and note the absence of motions on behalf of yourself in relation to important committee recommendations that would strengthen the Act towards achieving improved outcomes for Aboriginal and Torres Strait Islander children.

We note your Government's recent commitment to the *National Agreement on Closing the Gap*, including the priority to work in partnership with Aboriginal people to reduce the over-representation of our children in Western Australia's child protection systems. *The Family Matters Report 2020*, released this week, found that Western Australia has the highest over-representation of Aboriginal children in out-of-home care of any state or territory, and invests the least in supporting families. The system is failing our children and the situation is growing worse every year. Now, more than ever, it is critical that you listen to us in relation to the changes that are needed to turn this situation around.

Key Legislative Council Committee recommendations that your government is not intending to implement, and that are vitally important for our children, include:

- Recommendation 2, which would ensure that non-Indigenous carers are not preferenced above a child's Aboriginal family and kin Aboriginal carers, including members of a child's Aboriginal cultural group, simply on account of living in geographic proximity to the child's community.
- Recommendation 5, which would ensure the important principles of Aboriginal family and community participation in section 14 apply equally to decisions about placement and cultural support planning, notwithstanding the specific sections of the Act that deal with these matters; and
- Recommendation 7, which would ensure an obligation to consult with "each of" a child's family members, an Aboriginal representative organisation, and an Aboriginal department officer.

These amendments are relatively minor in nature, but are much more strongly aligned with best practice than the current proposed provisions.

You are well aware of our previous calls to further strengthen the requirements in the Act for Aboriginal family and community participation, including by way of legislating requirements for Aboriginal family-led decision-making (AFLDM), in line with recognised best practice provisions in Victoria and Queensland. While we acknowledge and welcome your commitment to a trial of AFLDM in Western Australia, we continue to assert that AFLDM is already a recognised best practice and human rights-based model that could be implemented more immediately and should be required in legislation.

We note that the Hon. Alison Xamon has proposed a number of alternative provisions to strengthen Aboriginal participation, including the proposals to replace section 14 with a stronger principle of family and community participation, and to introduce sections 81(1A) and 90A in respect of AFLDM. These proposed amendments align with best practice in enabling the participation of Aboriginal peoples in child protection decision-making and should enjoy the non-partisan support of members of the Legislative Council.

We request your urgent consideration and response in relation to these amendments. We would value the opportunity to work in partnership with you, in the spirit of the *National Agreement on Closing the Gap*, to design and implement legislative provisions that will ensure Aboriginal families and communities are at the centre of planning and decision-making for the safety and wellbeing of our children.

Yours faithfully,



Richard Weston
CEO
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Barbara Henry
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